

DISASTER RECOVERY FOR LOCAL GOVERNMENTS

2016 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill modifies the Public Safety Code and the Budgetary Procedures Act to establish a loan program to local government entities for the purpose of providing emergency disaster services.

Highlighted Provisions:

This bill:

- ▶ creates the Local Government Emergency Response Loan Fund for the purpose of providing short-term, low-interest loans to local government entities to be used for:
 - costs incurred for providing emergency disaster services; and
 - matching funds required to secure federal funds or grants related to a declared disaster;
- ▶ provides the criteria by which loans from the fund will be awarded;
- ▶ provides rulemaking authority for the Division of Emergency Management to administer the loan program;
- ▶ provides that funds from the State Disaster Recovery Restricted Account may be appropriated to the Local Government Emergency Response Loan Fund; and
- ▶ provides that a specified portion of the General Fund revenue surplus be deposited annually into the Local Government Emergency Response Loan Fund.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

53-2a-602, as last amended by Laws of Utah 2013, Chapter 117 and renumbered and amended by Laws of Utah 2013, Chapter 295

53-2a-603, as last amended by Laws of Utah 2013, Chapter 117 and renumbered and

amended by Laws of Utah 2013, Chapter 295

63J-1-314, as last amended by Laws of Utah 2013, Chapter 295

ENACTS:

53-2a-607, Utah Code Annotated 1953

53-2a-608, Utah Code Annotated 1953

53-2a-609, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **53-2a-602** is amended to read:

53-2a-602. Definitions.

(1) Unless otherwise defined in this section, the terms [~~defined in Part 1, Emergency Management Act, shall have the same meaning for this part~~] that are used in this part mean the same as these terms are defined in Part 1, Emergency Management Act.

(2) As used in this part:

(a) "Declared disaster" means one or more events:

(i) within the state;

(ii) that occur within a limited period of time;

(iii) that involve:

(A) a significant number of persons being at risk of bodily harm, sickness, or death; or

(B) a significant portion of real property at risk of loss;

(iv) that are sudden in nature and generally occur less frequently than every three years;

and

(v) that results in:

(A) the president of the United States declaring an emergency or major disaster in the state;

(B) the governor declaring a state of emergency under Title 53, Chapter 2a, Part 2, Disaster Response and Recovery Act; or

(C) the chief executive officer of a local government declaring a local emergency under Title 53, Chapter 2a, Part 2, Disaster Response and Recovery Act.

(b) "Disaster recovery fund" means the State Disaster Recovery Restricted Account created in Section 53-2a-603.

(c) "Emergency preparedness" means the following done for the purpose of being prepared for an emergency as defined by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

- (i) the purchase of equipment;
- (ii) the training of personnel; or
- (iii) the obtaining of a certification.

(d) (i) "Emergency disaster services" means the following:

- (A) evacuation;
- (B) shelter;
- (C) medical triage;
- (D) emergency transportation;
- (E) repair of infrastructure;
- (F) safety services, including fencing or roadblocks;
- (G) sandbagging;
- (H) debris removal;
- (I) temporary bridges;
- (J) procurement and distribution of food, water, or ice;
- (K) procurement and deployment of generators;
- (L) rescue or recovery;
- (M) emergency protective measures; or
- (N) services similar to those described in Subsections (2)(d)(i)(A) through (M), as defined by the division by rule, that are generally required in response to a declared disaster.

(ii) "Emergency disaster services" does not include:

- (A) emergency preparedness; or
- (B) notwithstanding whether or not a county participates in the Wildland Fire Suppression Fund created in Section 65A-8-204, any fire suppression or presuppression costs that may be paid for from the Wildland Fire Suppression Fund if the county participates in the Wildland Fire Suppression Fund.

(e) "Governing body" means:

- (i) for a county, city, or town, the legislative body of the county, city, or town;
- (ii) for a local district, the board of trustees of the local district; and

95 (iii) for a special service district:

96 (A) the legislative body of the county, city, or town that established the special service
97 district, if no administrative control board has been appointed under Section 17D-1-301; or

98 (B) the administrative control board of the special service district, if an administrative
99 control board has been appointed under Section 17D-1-301.

100 (f) "Local district" [~~has the same meaning as~~] means the same as that term is defined in
101 Section 17B-1-102.

102 (g) "Local fund" means a local government disaster fund created in accordance with
103 Section 53-2a-605.

104 (h) "Local government" means:

105 (i) a county;

106 (ii) a city or town; or

107 (iii) a local district or special service district that:

108 (A) operates a water system;

109 (B) provides transportation service;

110 (C) provides, operates, and maintains correctional and rehabilitative facilities and
111 programs for municipal, state, and other detainees and prisoners;

112 (D) provides consolidated 911 and emergency dispatch service;

113 (E) operates an airport; or

114 (F) operates a sewage system.

115 (i) "Special fund" means a fund other than a general fund of a local government that is
116 created for a special purpose established under the uniform system of budgeting, accounting,
117 and reporting.

118 (j) "Special service district" [~~has the same meaning as~~] means the same as that term is
119 defined in Section 17D-1-102.

120 (k) "State's prime interest rate" means the average interest rate paid by the state on
121 general obligation bonds issued during the most recent fiscal year in which bonds were sold.

122 Section 2. Section **53-2a-603** is amended to read:

123 **53-2a-603. State Disaster Recovery Restricted Account.**

124 (1) (a) There is created a restricted account in the General Fund known as the "State
125 Disaster Recovery Restricted Account."

126 (b) The disaster recovery [~~fund shall consist~~] account consists of:

127 (i) money deposited into the disaster recovery fund in accordance with Section

128 63J-1-314;

129 (ii) money appropriated to the disaster recovery fund by the Legislature; and

130 (iii) any other public or private money received by the division that is:

131 (A) given to the division for purposes consistent with this section; and

132 (B) deposited into the disaster recovery fund at the request of:

133 (I) the division; or

134 (II) the person or entity giving the money.

135 (c) The Division of Finance shall deposit interest or other earnings derived from

136 investment of [~~fund~~] account money into the General Fund.

137 (2) Subject to being appropriated by the Legislature, money in the disaster recovery

138 [~~fund~~] account may only be expended or committed to be expended as follows:

139 (a) (i) subject to Section 53-2a-606, in any fiscal year the division may expend or

140 commit to expend an amount that does not exceed \$250,000, in accordance with Section

141 53-2a-604, to fund costs to the state of emergency disaster services in response to a declared

142 disaster;

143 (ii) subject to Section 53-2a-606, in any fiscal year the division may expend or commit

144 to expend an amount that exceeds \$250,000, but does not exceed \$1,000,000, in accordance

145 with Section 53-2a-604, to fund costs to the state of emergency disaster services in response to

146 a declared disaster if the division:

147 (A) before making the expenditure or commitment to expend, obtains approval for the

148 expenditure or commitment to expend from the governor;

149 (B) subject to Subsection (5), provides written notice of the expenditure or

150 commitment to expend to the speaker of the House of Representatives, the president of the

151 Senate, the Division of Finance, and the Office of the Legislative Fiscal Analyst no later than

152 72 hours after making the expenditure or commitment to expend; and

153 (C) makes the report required by Subsection 53-2a-606(2);

154 (iii) subject to Section 53-2a-606, in any fiscal year the division may expend or commit

155 to expend an amount that exceeds \$1,000,000, but does not exceed \$3,000,000, in accordance

156 with Section 53-2a-604, to fund costs to the state of emergency disaster services in response to

157 a declared disaster if, before making the expenditure or commitment to expend, the division:

158 (A) obtains approval for the expenditure or commitment to expend from the governor;

159 and

160 (B) submits the expenditure or commitment to expend to the Executive Appropriations

161 Committee in accordance with Subsection 53-2a-606(3); and

162 (iv) in any fiscal year the division may expend or commit to expend an amount that

163 does not exceed \$150,000 to fund expenses incurred by the National Guard if:

164 (A) in accordance with Section 39-1-5, the governor orders into active service the

165 National Guard in response to a declared disaster; and

166 (B) the money is not used for expenses that qualify for payment as emergency disaster

167 services; ~~and~~

168 (b) subject to being appropriated by the Legislature, money not described in

169 Subsections (2)(a)(i), (ii), and (iii) may be expended or committed to be expended to fund costs

170 to the state directly related to a declared disaster that are not costs related to:

171 (i) emergency disaster services;

172 (ii) emergency preparedness; or

173 (iii) notwithstanding whether a county participates in the Wildland Fire Suppression

174 Fund created in Section 65A-8-204, any fire suppression or presuppression costs that may be

175 paid for from the Wildland Fire Suppression Fund if the county participates in the Wildland

176 Fire Suppression Fund~~[-]; and~~

177 (c) to fund the Local Government Emergency Response Loan Fund created in Section

178 53-2a-607.

179 (3) The state treasurer shall invest money in the disaster recovery fund according to

180 Title 51, Chapter 7, State Money Management Act.

181 (4) (a) Except as provided in Subsections (1) and (2), the money in the disaster

182 recovery fund may not be diverted, appropriated, expended, or committed to be expended for a

183 purpose that is not listed in this section.

184 (b) Notwithstanding Section 63J-1-410, the Legislature may not appropriate money

185 from the disaster recovery fund to eliminate or otherwise reduce an operating deficit if the

186 money appropriated from the disaster recovery fund is expended or committed to be expended

187 for a purpose other than one listed in this section.

(c) The Legislature may not amend the purposes for which money in the disaster recovery fund may be expended or committed to be expended except by the affirmative vote of two-thirds of all the members elected to each house.

(5) The division:

(a) shall provide the notice required by Subsection (2)(a)(ii) using the best available method under the circumstances as determined by the division; and

(b) may provide the notice required by Subsection (2)(a)(ii) in electronic format.

Section 3. Section **53-2a-607** is enacted to read:

53-2a-607. Creation and administration.

(1) (a) There is created an enterprise fund known as the Local Government Emergency Response Loan Fund.

(b) The division as defined in Section 53-2a-103 is the administrator of the fund.

(2) The fund consists of:

(a) money appropriated to the fund by the Legislature;

(b) money received for the repayment of loans made from the fund;

(c) interest earned on the fund; and

(d) money deposited into the fund in accordance with Section 63J-1-314.

(3) The money in the fund shall be invested by the state treasurer according to the procedures and requirements of Title 51, Chapter 7, State Money Management Act, except that all interest or other earnings derived from money in the fund shall be deposited into the fund.

(4) Local government entities may apply through the division for a short-term loan from the fund for the purposes provided in Section 53-2a-608, provided that the local government entity:

(a) agrees to the terms of the loan; and

(b) is not in default on any other state loans administered by the Division of Finance or any other state agency.

(5) The division may not loan out:

(a) more than 50% of the total account balance available at the time that a loan request is made by a local government entity; or

(b) an amount that will leave the fund balance at less than \$10,000,000.

Section 4. Section **53-2a-608** is enacted to read:

53-2a-608. Purposes and criteria for loans.

(1) Money in the fund shall be used by the department, as prioritized by the director, only to:

(a) provide loans to local government entities for:

(i) the costs incurred by a local government entity for providing emergency disaster services as defined in Section 53-2a-602; or

(ii) providing any state or local matching funds to secure federal funds or grants related to a declared disaster, as defined in Section 53-2a-602; and

(b) pay the Division of Finance for the costs of administering the fund, providing loans, and obtaining repayments of loans.

(2) The division shall establish the terms and conditions of the loans and the repayment schedule consistent with the following criteria:

(a) the interest rate charged and the maximum payback period on all loans shall be:

(i) the state's prime interest rate at the time of loan closing, plus zero percent, with a maximum payback period of 10 years if the applicant has reserved an average of 90% to 100% of the amount authorized in Section 53-2a-605 over the previous five fiscal years;

(ii) the state's prime interest rate at the time of loan closing, plus 2%, with a maximum payback period of five years if the applicant has reserved an average of 70% up to 90% of the amount authorized in Section 53-2a-605 over the previous five fiscal years; or

(iii) the state's prime interest rate at the time of loan closing, plus 4%, with a maximum payback period of three years if the applicant has reserved an average of 50% up to 70% of the amount authorized in Section 53-2a-605 over the previous five fiscal years; and

(b) the division may not authorize a loan from this fund on any terms or conditions to local government entities that have reserved an average of less than 50% of the amount authorized in Section 53-2a-605 over the previous five fiscal years.

(3) If the division receives multiple loan applications concurrently, priority shall be given to applicants based on the extent of their participation in the reserve account authorized in Section 53-2a-605.

Section 5. Section **53-2a-609** is enacted to read:

53-2a-609. Division to make rules to administer the loan program.

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

250 division shall make rules establishing:

251 (1) form, content, and procedure for loan and grant applications;

252 (2) criteria and procedures for prioritizing loan and grant applications;

253 (3) requirements and procedures for securing loans and grants;

254 (4) procedures for making loans;

255 (5) procedures for administering and ensuring repayment of loans, including late
256 payment penalties; and

257 (6) procedures for recovering on defaulted loans.

258 Section 6. Section **63J-1-314** is amended to read:

259 **63J-1-314. Deposits related to the Disaster Recovery Funding Act.**

260 (1) As used in this section, "operating deficit" means that, at the end of the fiscal year,
261 the unassigned fund balance in the General Fund is less than zero.

262 (2) Except as provided under [~~Subsection~~] Subsections (3) and (4), at the end of each
263 fiscal year, the Division of Finance shall, after the transfer of General Fund revenue surplus has
264 been made to the Medicaid Growth Reduction and Budget Stabilization Account, as provided
265 in Section 63J-1-315, and the General Fund Budget Reserve Account, as provided in Section
266 63J-1-312, transfer an amount into the State Disaster Recovery Restricted Account, created in
267 Section 53-2a-603, from the General Fund revenue surplus as defined in Section 63J-1-312,
268 calculated by:

269 (a) determining the amount of General Fund revenue surplus after the transfer to the
270 Medicaid Growth Reduction and Budget Stabilization Account under Section 63J-1-315 and
271 the General Fund Budget Reserve Account under Section 63J-1-312;

272 (b) calculating an amount equal to the lesser of:

273 (i) 25% of the amount determined under Subsection (2)(a); or

274 (ii) 6% of the total of the General Fund appropriation amount for the fiscal year in
275 which the surplus occurs; and

276 (c) adding to the amount calculated under Subsection (2)(b) an amount equal to the
277 lesser of:

278 (i) 25% more of the amount described in Subsection (2)(a); or

279 (ii) the amount necessary to replace, in accordance with this Subsection (2)(c), any
280 amount appropriated from the State Disaster Recovery Restricted Account within 10 fiscal

281 years before the fiscal year in which the surplus occurs if:

282 (A) a surplus exists; and

283 (B) the Legislature appropriates money from the State Disaster Recovery Restricted

284 Account that is not replaced by appropriation or as provided in this Subsection (2)(c).

285 (3) Notwithstanding Subsection (2), if, at the end of a fiscal year, the Division of

286 Finance determines that an operating deficit exists, the division shall reduce the transfer to the

287 State Disaster Recovery Restricted Account by the amount necessary to eliminate the operating

288 deficit.

289 (4) Notwithstanding Subsection (2):

290 (a) for the period beginning July 1, 2015, and ending June 30, 2020, the Division of

291 Finance shall transfer to the Local Government Emergency Response Loan Fund 25% of the

292 amount to be transferred into the State Disaster Recovery Restricted Account as provided in

293 Subsection (2)(b); and

294 (b) on and after July 1, 2020, the Division of Finance shall transfer to the Local

295 Government Emergency Response Loan Fund 10% of the amount to be transferred into the

296 State Disaster Recovery Restricted Account as provided in Subsection (2)(b).

Legislative Review Note
as of 6-15-15 4:51 PM

Office of Legislative Research and General Counsel